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In the Supreme Court of the United States

OCTOBER TERM, 1941.

THE CITY OF INDIANAPOLIS, *et al.*,

Petitioners.

v.

THE CHASE NATIONAL BANK OF THE
CITY OF NEW YORK, TRUSTEE, *etc.*,
et al.,

Respondents.

Nos. 10 and 11.

THE CHASE NATIONAL BANK OF THE
CITY OF NEW YORK, TRUSTEE, *etc.*,

Cross-Petitioner.

v.

CITIZENS GAS COMPANY OF INDIAN-
APOLIS, *et al.*,

Respondents.

Nos. 12 and 13.

**ADDITIONAL AUTHORITIES OF CHASE NATIONAL
BANK, TRUSTEE, ON JURISDICTIONAL QUESTION.**

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During the oral argument, the Court inquired whether the Plaintiff's counsel had any authorities dealing with the realignment of parties to determine Federal jurisdiction where a creditor brought suit against both the principal and surety. In response to that question, we submit the following authorities.

Ayres v. Wiswall, 112 U. S. 187 (1884). This was an action by citizens of New York brought in a State Court in Michigan to foreclose a mortgage originally executed by F. S. Ayres, Learned and Wiswall. Wiswall had conveyed his interest to F. S. Ayres, who agreed to pay the mortgage debt. Learned had sold his interest to E. R. Ayres, and in this transaction, F. S. Ayres, James Ayres and E. R. Ayres agreed to pay the mortgage debt. The defendant, Wiswall, was a citizen of New York. The other defendants were citizens of Ohio and Michigan.

Defendants, Wiswall and Learned, two of the original mortgagors, admitted the mortgage and the debt but asked that their grantees be declared to be primarily responsible for the indebtedness. F. S. Ayres and James Ayres admitted part of the liability but did not agree that they were liable for the full amount claimed. The three Ayres who had agreed to pay the mortgage indebtedness removed the case to the Federal Court on the ground that they were citizens of states other than New York. The District Court remanded the case to the State Court and on direct appeal to this Court the judgment was affirmed. This Court held that, although Wiswall did not contest his liability and sought to have the Ayres adjudged primarily responsible for the indebtedness, he could not be realigned as a party plaintiff because plaintiffs were seeking judgment against him. Speaking through Chief Justice Waite, the Court said (p. 191):

"The matter in dispute between the parties on the opposite side of the suit to enforce the mortgage, was the amount due on the mortgage debt. The complainants, citizens of New York, are on one side of the suit, and Edward Wiswall, also a citizen of New York, and others, citizens of Michigan and Ohio, on the other. If the claim of the complainants is sustained, the debt will be against all the defendants. It is clear that the complainants have got all the relief they ask, and would have their standing on the roll, they are entitled to. Wiswall is a necessary and substantial party to the suit and must be separated from them."

Similarly, in *Coney v. Winchell*, 116 U. S. 227 (1886), the Supreme Court affirmed an order of the Circuit Court remanding the case to the State Court. The plaintiff mortgagee had sued to foreclose the mortgage and had joined both the original mortgagor, Carll, and the mortgagor's grantee, Coney, as defendants. Both the mortgagor and the mortgagee were citizens of Connecticut. The Court held that the mortgagor could not be realigned with the plaintiff for jurisdictional purposes, but must remain as a defendant, since the plaintiff was seeking a judgment against him.

The two cases cited are just the converse of the situation here before the Court. In each of these cases, the mortgagor and the mortgagee were citizens of the same state and in both cases the Court held that the mortgagor could not be aligned with the mortgagee, although the grantee was the party primarily liable and the mortgagor in one of the cases was asking the Court to determine that the grantee was primarily liable. It follows from these cases that Indianapolis Gas, against whom the Plaintiff seeks a judgment in this case, can not be realigned with the Plaintiff merely because the City or the trust property may be primarily liable.

See also *Mutual Reserve Fund Life Association v. Farmer*, 77 Fed. 929 (C. C. A. 8th 1896).

In *Feidler v. Bartleson*, 161 Fed. 30 (C. C. A. 9th 1908), the Court sustained Federal jurisdiction. Plaintiff, a non-resident of Washington, had recovered judgment against E. J. Feidler in the State Court. He thereupon brought suit in the Federal Court in Washington against E. J. Feidler and the administratrix of the Estate of Ed Feidler, claiming that the two brothers had been partners and that the partnership assets were the decedent's only assets. The bill alleged that the defendant administratrix denied the fact of the partnership.

Both of the defendants were citizens of Washington. The administratrix attacked the jurisdiction of the Court on the

ground that the plaintiff was attempting to establish a claim which his judgment debtor, F. J. Feidler, had against a citizen of Washington. Jurisdiction was sustained in the District Court and, on appeal, the judgment was affirmed. In sustaining jurisdiction, the Circuit Court of Appeals said (P. 35):

"It is urged, further, that the demurrer should have been sustained for the reason that the appellee sought by his bill to compel the defendants therein, who are both residents of the state of Washington, to litigate in the Circuit Court a demand which one had against the other. To this it is only necessary to say that the bill is not brought to permit or to compel the defendants therein to litigate between themselves. It is a bill to establish the existence of a partnership between Ed. L. Feidler and F. J. Feidler, only for the purpose of subjecting the interest of the latter in the partnership funds to the payment of the appellee's judgment."

These cases like the cases previously cited (Pl. Br. 41-3) establish that as long as plaintiff is asserting *any* claim against a defendant that defendant will not be realigned with plaintiff in determining federal jurisdiction. The claims asserted by the *plaintiff* determine federal jurisdiction, not the attitude of the defendants among themselves.

Respectfully submitted,

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